

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

IN THE MATTER OF: : S08M-12-002 ABH

\$2,157.00 in United States :
Currency :

COMMISSIONER'S ORDER

Pending before the Court is the motion of Frank Williams ("Williams") to dismiss the application of the State of Delaware ("the State") for forfeiture of \$1,302.00 in United States currency ("the currency") seized from Williams on August 5, 2008, when he was arrested on a drug charge. Williams also asks that the currency be returned to him. This is my decision denying the motion and ordering the currency be forfeited to the State.¹

At the time of the seizure, the State handed Williams a receipt for the currency and a "NOTIFICATION OF FORFEITURE", which stated in pertinent part as follows:

NOTIFICATION OF FORFEITURE

The property described above has been seized by the State of Delaware pursuant to the drug asset forfeiture statute, 16 Del. C. Section 4784. The State of Delaware will move to forfeiture the property as provided by law.

RIGHTS OF PROPERTY OWNERS

1. You may contest the forfeiture action by filing for Return of Property in the Superior Court. Form Petitions are available at the Prothonotary's Office. ***

¹This decision is considered and rendered pursuant to Administrative Directive of the President Judge of the Superior Court, No. 2007-5.

Williams was sent a notice of forfeiture **which he received** while incarcerated at Sussex Correctional Center. That notice, dated September 2, 2008, provided as follows:

RE: NOTICE OF FORFEITURE

Dear Mr. Williams:

This letter is to inform you that the property listed below was seized by the State of Delaware under the authority of Title 16 of the Delaware Code, Section 4784. We intend to file a petition in Superior Court to forfeit the seized property to the State of Delaware.

Owners or lienholders who contest the forfeiture of seized property must file a Civil Petition for Return of Property in the Superior Court within **forty-five** days of this notification. Petitions for Return of Property must comply with Superior Court Civil Rule 71.3. You may wish to contact a private attorney if you have any questions regarding this matter.

DESCRIPTION:	\$1302.00 US Currency
SEIZED FROM:	Frank Williams
PLACE SEIZED:	Crooked Road
SEIZING AGENCY:	Delaware State Police
COMPLAINT:	07-08-300448
DATE SEIZED:	08/05/08

Additionally, a notice of forfeiture was published in The News Journal on September 2, 2008, and it provided in pertinent part as follows:

Notice is hereby given that the properties listed below were seized for violation of Title 16 of the Delaware Code. Owners or leinholders [sic] who can establish that the property was forfeited by and [sic] act or omission committed or omitted without their consent may apply for remission at the office of the Attorney General, Forfeiture Division, Wilmington, Delaware. Persons desiring to contest the forfeiture of assets seized pursuant to Title 16 of the Delaware Code, Section 4784, may protect their interest by filing a civil petition in Superior Court within 45 days after the date of this notice, or mailed notice, whichever is later. Superior Court Civil Rule 71.3 sets out the requirements of filing a civil forfeiture petition.

From: Frank Williams
Agency: Delaware State Police
Where: Crooked Road
Date Seized: 08/05/08

Article: \$1302.00 US Currency

On December 2, 2008, after the 45 day period for filing a petition seeking a return of the property had passed, the State filed an application to forfeit the currency.² On December 3, 2008, Williams filed a motion to dismiss the State's application and sought a return of the currency.

Williams advances the following argument in support of his motion to dismiss.

Forfeitures are not favored and "should be enforced only when within both letter and spirit of the law." *United States v. One 1936 Model Ford V-8 DeLuxe Coach, Motor No. 18-3306511*, 307 U.S. 219, 226 (1939). A forfeiture proceeding is governed by 16 *Del. C.* § 4784(j)³ and Superior Court Civil Rule 71.3. This Court rule provides in pertinent part as follows:

(a) *Notification of seizure.* Notification of seizure pursuant to 16 *Del. C.* § 4784(j) shall be made within 60 days of the date of seizure. In addition to the notification of seizure required by 16 *Del. C.* § 4784(j), should any known party having a possessory interest in the seized property be incarcerated, the State shall send notification of seizure by first class mail sent to the correctional facility in which said party is confined. In all such cases, the notification shall consist of:

- (1) A description of the seized property,
- (2) The person or persons seized from,
- (3) The seizing agency,

²Included in that application was an application to seize \$855.00 in United States currency seized from another person. No dispute exists concerning that property.

³In 16 *Del. C.* § 4784(j), it is provided as follows:

Property seized pursuant to this section that is not summarily forfeited pursuant to subsection (f) of this section shall be automatically forfeited to the State upon application to the Superior Court if, within 45 days of notification of seizure to all known parties having possessory interest in the seized property by registered or certified mail to the last known post-office address of the parties in interest and by publication in a newspaper of general circulation in this State, the person or persons claiming title to the seized property do not institute proceedings in the Superior Court to establish:

- (1) That they have the lawful possessory interest in the seized property; and
- (2) The property was unlawfully seized or not subject to forfeiture pursuant to this section.

- (4) The time and place where the seizure took place, and,
- (5) A statement that persons claiming an interest in said property may seek to have it returned pursuant to Superior Court Civil Rule 71.3(c) by filing a petition with the Superior Court in the County in which the property was seized no later than 45 days after the date of the notice, to establish: (1) that they have a lawful possessory interest in the seized property; and (2) the property was unlawfully seized or not subject to forfeiture under 16 Del. C. § 4784.

The use of the word “shall” renders compliance with this rule mandatory and the notice requirements implicate Constitutional Fifth Amendment Due Process Rights. Even if the Court rules strict compliance is not required, the notice provided did not substantially comply with the rule. The notice which Williams received fails to comply with the rule in two ways. First, it does not state the time (hour, minute and second) when the seizure took place. Second, it does not include the “statement” required by Superior Court 71.3(a)(5) in that it does not state in which county to file the petition and what must be established. Since the notice was deficient and since the State’s 60 day period for providing a legally sufficient notice has passed, the deficiency cannot be cured, the petition must be dismissed, and the currency must be returned to Williams.

Williams actually received notice of the forfeiture. If he desired to object to the sufficiency of the notice, he needed to file his objection within 45 days from September 2, 2008, the date of his notice. By failing to do so, he waived his right to object to the sufficiency of the notice. *Board of Public Education in Wilmington v. Delaney*, 155 A.2d 51, 54 (Del. 1959). *See In re \$18,000.00 and \$2,500.00 United States Currency*, 1996 WL 769329, *2 (Del. Super. Dec. 20, 1996), *app. diss.*, 698 A.2d 409, 1997 WL 450263 (Del. July 29, 1997) (TABLE) (“Once the 45 days has expired, ... the petitioner has no grounds to object.”). Thus, Williams’ motion is denied.

Even if this Court considered the motion on its merits, it would fail.

The first issue is whether Williams’ constitutional due process rights were violated.

Pursuant to 16 Del. C. § 4784(j) and Superior Court Civil Rule 71.3(a), notification of forfeiture must be sent by registered or certified mail to the last known post-office address of the parties in interest, to the correctional facility where a party is confined, and by publication in a newspaper of general circulation in this State. Mailed notice sent where the person is most likely to receive the notice meets the requirements of the due process clause. *Quinn v. Keinicke*, 700 A.2d 147, 154 (Del. Super. 1996); *Cunningham v. City of Wilmington*, 1982 WL 592911 (Del. Super. Feb. 11, 1982); *Sommers v. Gaston*, 295 A.2d 578, 580-81 (Del. Super. 1972). Actual or personal notice is not required. *State v. Tucker*, 1997 WL 716899 (Del. Super. Aug.12, 1997). See *IN THE MATTER OF: \$2,053.00 in United States Currency*; *IN THE MATTER OF: Two Pagers (Beepers)*, 676 A.2d 908, 1996 WL 209896 (Del. April 23, 1996) (TABLE). Thus, in this case, where Williams received actual notice, due process requirements were met.

The next issue is whether the notice complied with Rule 71.3 and if not, whether the defects render the notice meritless.

Williams first argues that the notice did not state the time when the currency was seized. Williams' definition of "time" is limited to mean the exact hour, minute, and second when the currency was seized. That is an illogical and unworkable limitation of the definition of "time." Should the Court so limit the definition of "time", virtually every seizure would be subject to a factual dispute regarding the issue of time, as watches and clocks differ. The word "time", as used in the phrase "time and place", encompasses a date and naming the date is sufficient. I support this conclusion by turning to the phrase, "time and place" set forth in 11 *Del. C.* § 224(1). Therein, it is provided that in order to determine the value of property relevant to a criminal prosecution, unless otherwise specified, "value means the market value of the property at the time and place of the

crime, or if that cannot be satisfactorily ascertained, the cost of replacing the property within a reasonable time after the crime.” “Time” clearly is not limited to the hour, minute and second in this phrase and a date is sufficient. Similarly, here, by providing the date when it seized the currency, the State provided notice of the “time” the property was seized. Williams’ argument on this issue fails.

Williams’ next argument is that the notice did not contain:

A statement that persons claiming an interest in said property may seek to have it returned pursuant to Superior Court Civil Rule 71.3(c) by filing a petition with the Superior Court in the County in which the property was seized no later than 45 days after the date of the notice, to establish: (1) that they have a lawful possessory interest in the seized property; and (2) the property was unlawfully seized or not subject to forfeiture under 16 Del. C. § 4784.

The notice received stated: “Owners or lienholders who contest the forfeiture of seized property must file a Civil Petition for Return of Property in the Superior Court within **forty-five** days of this notification. Petitions for Return of Property must comply with Superior Court Civil Rule 71.3.” The sentence, “Petitions for Return of Property must comply with Superior Court Civil Rule 71.3”, instructs a party in interest to follow that rule. When the person reviews that Rule, he or she learns what must be filed to obtain a return of the property. In Superior Court Civil Rule 71.3(c), it is provided:

Petition for the return of property. An owner or interest holder may seek the return of property seized by the State pursuant to 16 Del. C. § 4784 by filing, costs prepaid, a civil petition, with the Superior Court sitting in the County in which the property was seized no later than 45 days after the date of the notice required by 16 Del. C. § 4784(j) measured from the date of mailing or the date of publication whichever shall be later. Such petition which must be signed by the owner or interest holder, under oath, and which must be served on the Attorney General, shall set forth the following:

- (1) the name and address of the claimant;
- (2) A description of the property sought to be returned;
- (3) The nature and extent of the claimant’s possessory interest in the property;

- (4) The date, identity of the transferor, and circumstances of the claimant's acquisition of the interest in the property;
 - (5) The specific provisions of 16 Del. C. § 4784 relied on in asserting that it is not subject to forfeiture; and
 - (6) All essential facts supporting each assertion.
- If the petition is not timely filed, the State may proceed as provided in paragraph (b) above.

Referring a person to the Rule itself guarantees that the person will file a petition which complies with all of the Rule's requirements. Were the party in interest to file a petition which contained, pursuant to Rule 71.3(a)(5), only the statements that they have a lawful possessory interest in the seized property and the property was unlawfully seized or not subject to forfeiture under 16 Del. C. § 4784, then the petition would be dismissed as insufficient. *See Collick v. State*, 2004 WL 2829045 (Del. Super. April 20, 2004) (petition dismissed because it was not filed under oath as Superior Court Civil Rule 71.3(c) requires).

Williams correctly argues that because forfeitures are not favored, this Court requires strict compliance with the letter of the law. *Morton v. State*, 1996 WL 111212, *2 (Del. Super. Jan. 31, 1996). However, it would be absurd to rule that the notice given here, which references a party in interest to pertinent and complete information, is invalid. The Court will not enforce an absurd result. The notice given here was legally sufficient.

In light of the foregoing, I conclude as follows.

- 1) Williams' motion must be denied because he failed to timely file his objections to the notice.
- 2) Alternatively, Williams' motion is meritless.
- 3) Williams is not entitled to the currency, and the currency must be forfeited to the State of Delaware.
- 4) If either party wishes to file an appeal from this decision pursuant to Superior Court

Civil Rule 132, then it must do so on or before March 11, 2009.

5) Absent an appeal, the decision in this matter shall become final on March 12, 2009, and the proposed Order of Forfeiture attached to the State's Application for Forfeiture shall be signed without further notice.

IT IS SO ORDERED THIS 25th DAY OF FEBRUARY, 2009.

Commissioner

cc: Prothonotary's Office
Robert J. O'Neill, Jr., Esquire
Tasha M. Stevens, Esquire